IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6886 OF 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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VALA VIRAM & ORS. - Petitioner(s)
Versus
MAMLATDAR, GONDAL TALUKA - Respondent(s)

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Appearance :
SHRI MEHUL S. SHAH for Petitioner(s).
SHRI A.Y. KOGJE, ASST. GOVERNMENT PLEADER for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/01/2007

ORAL JUDGMENT

Heard Shri Mehul S. Shah, learned Counsel for the petitioners, and Shri A.Y. Kogje, learned Assistant Government Pleader for the respondent-State.

2. As many as sixty six persons are before this Court challenging the notices dated 8th April, 2004 issued by the Mamlatdar, Gondal against one Bharwad Gokal Govind, alleged to be the President of Krishna Gopal Vividh Karyakari Sahakari Mandli, Gondal, whereunder said Bharwad Gokal Govind has been asked to remove his possession from land bearing Survey Nos.27/2 and 27/6.

3. On an earlier occasion, almost identical notice was issued against Bharwad Gokal Govind in his capacity as a President of the afore-referred Cooperative Society. The said notice came to be challenged by the present petitioners in Special Civil Application No.4766 of 1983. The High Court observed that as interest of each of the petitioners was involved, independent notices were required to be issued. The High Court observed that though the Collector under Section 202 of the Bombay Land Revenue Code was entitled to dispossess the person, who was in wrongful possession of the Government land, but, before evicting such person, a notice was required to be served upon him. The High Court also observed that in the facts of the case, the impugned eviction of the petitioners from the land in question would be arbitrary and illegal for the reason that the eviction was sought to be made without giving any opportunity of being heard

in the matter. The High Court, however, reserved liberty in favour of the State Government that the petitioners can be evicted after observing the due process of law.

4. Shri Shah, learned Counsel for the petitioners, submits that the present notice virtually is replica or repetition of the earlier notice and the same deserves to be quashed.

5. On the other hand, Shri Kogje, learned Counsel for the State, submits that the present notice may be taken to be notice to show cause and each of the petitioners may be allowed to file their independent objections so that they are properly heard.

The submission made by the learned Counsel for the State appears to be reasonable.

6. The petition is hereby disposed of with the following directions:

(i) Notice dated 8th April, 2004 (Annexure-F to this petition) issued against Bharwad Gokal Govind in his capacity as the President of the afore-referred Cooperative Society, would be deemed

to be notice to each of the petitioners.

(ii) The petitioners, either personally or through their constituted Attorney or Counsel, may appear before the Mamlatdar on 12th February, 2007. Either on the said date or within the period extended by the Mamlatdar, which shall not be more than four weeks in any case, they shall file their objections.

(iii) If objections are filed by the petitioners within the time prescribed by this Court, then, the Mamlatdar shall give opportunity to the parties to lead evidence, if he so desires, hear the parties and decide the objections in accordance with law by a speaking order. In case one or some of the petitioners do not file their objections, then, the Mamlatdar shall be entitled to proceed *ex parte* against them.

(iv) In any case, the matter shall be finally disposed of within a period of six months from the date of appearance of the petitioners before the Mamlatdar.

Rule is made absolute. No costs.

Direct Service is permitted.

[R.S.Garg, J.]

*kamlesh**